

§ 17.29

14 CFR Ch. I (1–1–13 Edition)

(d) A party shall serve a copy of the contract dispute upon the other party, by means reasonably calculated to be received on the same day as the filing is received by the ODRA.

(e) With the exception of the time limitations established herein for the filing of contract disputes, the ODRA retains the discretion to modify any timeframe established herein in connection with contract disputes.

§ 17.29 Informal resolution period.

(a) The ODRA process for contract disputes includes an informal resolution period of twenty (20) business days from the date of filing in order for the parties to attempt to informally resolve the contract dispute either through direct negotiation or with the assistance of the ODRA. The CO, with the advice of FAA legal counsel, has full discretion to settle contract disputes, except where the matter involves fraud.

(b) During the informal resolution period, if the parties request it, the ODRA will appoint a DRO for ADR who will discuss ADR options with the parties, offer his or her services as a potential neutral, and assist the parties to enter into an agreement for a formal ADR process. A person serving as a neutral in an ADR effort in a matter shall not serve as an adjudicating DRO or Special Master for that matter.

(c) The informal resolution period may be extended at the request of the parties for good cause.

(d) If the matter has not been resolved informally, the parties shall file joint or separate statements with the ODRA no later than twenty (20) business days after the filing of the contract dispute. The ODRA may extend this time, pursuant to § 17.27(e). The statement(s) shall include either:

(1) A joint request for ADR, or an executed ADR agreement, pursuant to § 17.37(d), specifying which ADR techniques will be employed; or

(2) Written explanation(s) as to why ADR proceedings will not be used and why the Adjudicative Process will be needed.

(e) If the contract dispute is not completely resolved during the informal resolution period, the ODRA's Adjudicative Process will commence unless

the parties have reached an agreement to attempt a formal ADR effort. As part of such an ADR agreement the parties, with the concurrence of the ODRA, may agree to defer commencement of the adjudication process pending completion of the ADR or that the ADR and adjudication process will run concurrently. If a formal ADR is attempted but does not completely resolve the contract dispute, the Adjudicative Process will commence.

(f) The ODRA shall hold a status conference with the parties within ten (10) business days, or as soon thereafter as is practicable, of the ODRA's receipt of a written notification that ADR proceedings will not be used, or have not fully resolved the Contract Dispute. The purpose of the status conference will be to commence the Adjudicative Process and establish the schedule for adjudication.

(g) The submission of a statement which indicates that ADR will not be utilized will not in any way preclude the parties from engaging in non-binding ADR techniques during the Adjudicative Process, pursuant to subpart D of this part.

§ 17.31 Dismissal or summary decision of contract disputes.

(a) Any party may request by motion, or the ODRA on its own initiative may recommend or direct, that a contract dispute be dismissed, or that a count or portion thereof be stricken, if:

(1) It was not timely filed;

(2) It was filed by a subcontractor or other person or entity lacking standing;

(3) It fails to state a matter upon which relief may be had; or

(4) It involves a matter not subject to the jurisdiction of the ODRA.

(b) Any party may request by motion, or the ODRA on its own initiative may recommend or direct, that a summary decision be issued with respect to a contract dispute, or any count or portion thereof if there are no material facts in dispute and a party is entitled to a summary decision as a matter of law.

(c) In connection with any potential dismissal of a contract dispute, or summary decision, the ODRA will consider any material facts in dispute in a light

most favorable to the party against whom the dismissal or summary decision would be entered, and draw all factual inferences in favor of that party.

(d) At any time, whether pursuant to a motion or on its own initiative and at its discretion, the ODRA may:

(1) Dismiss or strike a count or portion of a contract dispute or enter a partial summary decision;

(2) Recommend to the Administrator that the entire contract dispute be dismissed or that a summary decision be entered; or

(3) With a delegation from the Administrator, dismiss the entire contract dispute or enter a summary decision with respect to the entire contract dispute.

(e) An order of dismissal of the entire contract dispute or summary decision with respect to the entire contract dispute, issued either by the Administrator or by the ODRA, on the grounds set forth in this section, shall constitute a final agency order. An ODRA order dismissing or striking a count or portion of a contract dispute or entering a partial summary judgment shall not constitute a final agency order, unless and until such ODRA order is incorporated or otherwise adopted in a final agency decision of the Administrator or the Administrator's delegatee regarding the remainder of the dispute.

(f) Prior to recommending or entering either a dismissal or a summary decision, either in whole or in part, the ODRA shall afford all parties against whom the dismissal or summary decision would be entered the opportunity to respond to a proposed dismissal or summary decision.

§ 17.33 Adjudicative Process for contract disputes.

(a) The Adjudicative Process for contract disputes will be commenced by the ODRA Director upon being notified by the ADR neutral or by any party that either—

(1) The parties will not be attempting ADR; or

(2) The parties have not settled all of the dispute issues via ADR, and it is unlikely that they can do so within the time period allotted and/or any reasonable extension.

(b) In cases initiated by a contractor against the FAA, within twenty (20) business days of the commencement of the Adjudicative Process or as scheduled by the ODRA, the Product Team shall prepare and submit to the ODRA, with a copy to the contractor, a chronologically arranged and indexed substantive response, containing a legal and factual position regarding the dispute and all documents relevant to the facts and issues in dispute. The contractor will be entitled, at a specified time, to supplement the record with additional documents.

(c) In cases initiated by the FAA against a contractor, within twenty (20) business days of the commencement of the Adjudicative Process or as scheduled by the ODRA, the contractor shall prepare and submit to the ODRA, with a copy to the Product Team counsel, a chronologically arranged and indexed substantive response, containing a legal and factual position regarding the dispute and all documents relevant to the facts and issues in dispute. The Product Team will be entitled, at a specified time, to supplement the record with additional documents.

(d) Unless timely objection is made, documents properly filed with the ODRA will be deemed admitted into the administrative record. Discovery requests and responses are not part of the record and will not be filed with the ODRA, except in connection with a motion or other permissible filing. Designated, relevant portions of such documents may be filed, with the permission of the ODRA.

(e) The Director of the ODRA shall assign a DRO or a Special Master to conduct adjudicatory proceedings, develop the administrative adjudication record and prepare findings and recommendations for the review of the ODRA Director or the Director's designee.

(f) The DRO or Special Master may conduct a status conference(s) as necessary and issue such orders or decisions as are necessary to promote the efficient resolution of the contract dispute.

(g) At any such status conference, or as necessary during the Adjudicative Process, the DRO or Special Master will: